



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Jerry L. Clark
Assistant Criminal District Attorney
Calhoun County
211 S. Ann Street
Port Lavaca, Texas 77979

OR95-1486

Dear Mr. Clark:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code.¹ A copy of the first page of your letter to this office is enclosed for your reference. You assert that the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code. Your request was assigned ID# 29841.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

¹You also state that requestor has sought "all information on the Union Carbide explosion" and that you have denied that request on grounds that it is "too broad and ambiguous." A request for records made pursuant to the Open Records Act may not be disregarded simply because a citizen does not specify the exact documents he desires. When a requestor makes a vague request, your office should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow the request. See Open Records Decision No. 87 (1975).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On January 18, 1995, we asked you to clarify your reasons as to why the information should be excepted from disclosure. To date we have not received any clarification from your office.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act and that you have therefore waived the protection of section 552.108. *See also* Open Records Decision No. 394 (1983) (police dispatch logs not protected by "law-enforcement exception").

You also claim that the requested information is deemed confidential under section 773.091 of the Health and Safety Code. Section 773.091(b) provides:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision *that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider* are confidential and privileged and may not be disclosed except as provided by this chapter. (Emphasis added.)

The "Dispatcher Radio Logs" you have submitted to this office clearly do not come within the scope of section 773.091 because they are created and maintained by the sheriff's department, not medical personnel. Consequently, you must release these records in their entirety.

On the other hand, it is not clear to this office as to whether the other records you submitted to this office were "created by the emergency medical services personnel or physician or maintained by an emergency medical services provider." If such is the case, you must withhold these other records, but only to the extent that they reveal "the identity, evaluation, or treatment of a patient." The remaining portions of these documents must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Loretta DeHay".

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 29841

Enclosures: First page of Oct. 12, 1994 letter
Submitted documents

cc: Mr. Eloy Guerra
1446 Texas Avenue
Texas City, Texas 77590
(w/o enclosures)